



860 Courtlandt Avenue, Bronx, NY 10451
(718) 838-7878 • Fax: (718) 665-0100

December 20, 2007

Honorable William H. Pauley
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

DEC 27 2007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 12/27/07

RE: *Carlos Negron v. City of New York, et al.*, 07-Civ-7408 (WHP) (KNF)

Your Honor:

MEMO ENDORSED

I am an attorney associated with The Bronx Defenders, a non-profit public defender agency, and I represent the plaintiff in the above-referenced action. I write to respectfully request that plaintiff's time to serve the summons and complaint on individual defendant P.O. George Reyes and unidentified defendant John Does and Richard Roes be enlarged under Rule 4(m) from December 19, 2007 to February 19, 2008 because of difficulty in locating them. This letter is plaintiff's first request for an enlargement of time in this action. Defendants' counsel has consented to this enlargement of time.

I have had difficulty locating P.O. Reyes for service of process because he has retired from the force. Assistant Corporation Counsel Megan Cavalieri has consented to this 60-day extension of time to serve P.O. Reyes and has agreed to provide a new address for service of process on him, including whether he consents to have Corporation Counsel or the NYPD accept service for him. Plaintiff also requests an enlargement of time under Rule 4(m) to serve all unidentified defendants so that the City has sufficient time to identify them based on a review of records exclusively in its control. ACC Cavalieri has also indicated that she will make a good faith effort to determine the identities of these "Doe" defendants. The City cannot identify these defendants until it can access files sealed under NY CPL § 160.50. Plaintiff has executed a waiver to permit this access. As the Court is aware, due to the 2000 revisions to Federal Rule of Civil Procedure 26, plaintiff cannot engage in discovery to ascertain P.O. Reyes' address and defendants' identities until the preliminary conference. Service will not be possible until the NYPD provides this information. All other identified defendants have been timely served. An initial pre-trial conference is currently scheduled for February 1, 2008 at 9:45 a.m.

Accordingly, I respectfully request that plaintiff's time under Rule 4(m) to serve process on Defendant P.O. Reyes and unidentified defendant John Does and Richard Roes be extended *nunc pro tunc* to February 19, 2008. I note that Rule 4(m) of the Federal Rules of Civil Procedure provides that if service of the summons and complaint is not made within 120 days after filing a court "shall extend the time for service for an appropriate period" if the plaintiff shows good cause for the failure. Fed. R. Civ. P. 4(m); *see Shider v. Communications Workers of America*, No. 95 Civ. 4908, 1999 WL 673345, at *2 (S.D.N.Y. Aug. 30, 1999); *Blessinger v. United States*, 174 F.R.D. 29, 31 (E.D.N.Y. 1997). Even in the absence of good cause, the

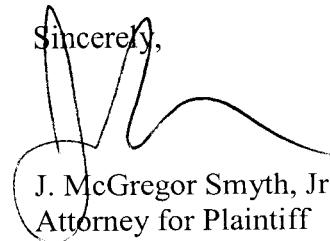
Application granted.
SO ORDERED:

WILLIAM H. PAULEY III U.S.D.J.

12/27/07

Court, in its discretion, may extend the time for service. *See Shider*, 1999 WL 673345, at * 2; *Gowan v. Teamsters Union* (237), 170 F.R.D. 356, 359-60 (S.D.N.Y. 1997).

Thank you for your consideration of this request.

Sincerely,

J. McGregor Smyth, Jr. (JS-9995)
Attorney for Plaintiff

Cc: Megan Cavalieri
Assistant Corporation Counsel
VIA FAX: (212) 788-9776